JD(SF)–65-02
Los Angeles, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS,
LOCAL 433, AFL-CIO

and Case 21-CB-12858

SOTERO LOPEZ, An Individual

Sonia Sanchez, and Robert MacKay, Attys.,
NLRB Region 21, for the General Counsel.

David L. Rosenfeld, Atty., of *Van Bourg, Weinberg,*
Roger & Rosenfeld, P.C., Oakland, CA for Respondent.

Sortero Lopez, pro se.

DECISION

Statement of the Case

WILLIAM L. SCHMIDT, Administrative Law Judge. On November 8, 2000, the Regional Director for Region 21 issued a complaint and notice of hearing alleging International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO (Respondent, Local 433, or the Union) violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act (the Act). The complaint is based on a charge Sotero Lopez (Lopez) filed on April 28, 2000,[1] and amended on July 7, and again on October 11. As amended at the hearing, the complaint presents the following issues for resolution: (1) Did Local 433 insist unlawfully upon allocating the dues Lopez offered to pay January and March against his 1996 fine; (2) Did Local 433 unlawfully refuse to register or refer Lopez from its exclusive hiring hall after suspending him from membership on April 30; and (3) After suspending Lopez from membership, did Local 433 breach its duty of fair representation by failing to inform him of his membership and dues options under *General Motors* and *Beck.*[2]

I heard this case in Los Angeles, California, on June 24, 2002. Having now carefully considered the record and the demeanor of the witnesses,[3] and after considering the briefs filed

[1] Unless shown otherwise, all further dates refer to the 2000 calendar year.

[2] *NLRB v. General Motors Corp*., 373 U.S. 734 (1963); *Communications Workers v. Beck*, 487 U.S. 735 (1988).

[3] My findings reflect credibility resolutions based on factors cited by Judge Medina in *U.S. v. Foster*, 9 F.R.D. 367, 388-390 (1949). Testimony inconsistent with my findings is not credited.

by the General Counsel, Lopez, and Local 433, I find the General Counsel prevailed on the first and third issues, above, but did not prevail on the second issue based on the following

Findings of Fact

I. Jurisdiction

The District Council of Ironworkers of the State of California acting on behalf of Respondent and other local unions affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers negotiates and executes collective-bargaining agreements with various employer associations and contractors, including the Steel Fabricators Association (SFA), the Building Industry Association of Southern California, Inc. (BIASC), the Southern California Contractors Association, Inc. (SCCA), Bragg, Crane and Rigging Company (BCR), and the Western Steel Council, Inc (WSC). The employer-members of SFA, BIASC, SCCA, and WSC as well as BCR each provide services valued in excess to $50,000 to customers in the State of California each of whom in turn annually purchase and receive goods valued in excess of $50,000, directly from suppliers located outside the State of California. Accordingly, I find the above-named employer-associations and BCR to be employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act. The Union is aligned with the named statutory employers through a multi-state collective-bargaining agreement titled: Iron Worker Employers State of California and a Portion of Nevada and District Council of Iron Workers of the State of California and Vicinity [California-Southern Nevada Agreement]. Accordingly, I find that it would effectuate the purposes of the Act for the Board to exercise its jurisdiction to decide this dispute.

II. Alleged Unfair Labor Practices

A. Relevant Facts

The collective-bargaining agreement involved here that applies to the employees employed by the employer-members of the associations mentioned above provides for the operation of an exclusive hiring hall and details a number of rules and procedures governing the hiring hall operation. Officials of Local 433 and the other local unions comprising the District Council oversee the hiring hall operations at their respective locals. Pursuant to this contractual arrangement, Local 433 maintains an out-of-work register at each of its branch offices.

The California-Southern Nevada Agreement also contains a standard, construction industry union-security clause. It requires as a condition of employment that employees who were union members and employed under the agreement on its effective remain members in good standing. All others who become employed under the agreement must "on or after eight (8) continuous or accumulative days of employment on such work with any individual employer following the beginning of such employment or the effective date of the [Agreement], whichever is later" become a member of the local union having jurisdiction over the territory where the employee is employed and thereafter remain a member in good standing. Jt. Exh. 1, p. 6-7 (Sec. 4 A). By the terms of the union security clause, an employer may not terminate an employee for noncompliance with its requirements until it receives a "written request from the District Council…or Local Union…stating all pertinent facts…." Jt. Exh. 1, p 7 (Sec. 4 B).

Lopez, a certified welder, became a member of Local 433 in 1980 and remained a member at all times until Local 433 suspended his membership in April 2000, ostensibly

because his dues became six months past due. Over the years, he regularly sought work in his trade by registering for referral on the Union's out-of-work list. In recent years, however, Lopez has suffered from significant work injuries that resulted in lengthy periods of disability. The first occurred in June or July 1996 when a back injury left him unable to work again until November 1998. The second occurred in July 1999 when he became seriously ill after exposure to acid fumes. This disability period lasted until July 2000 or longer.

At some time in 1996, local union officials initiated internal union charges against Lopez claiming that he violated the contractual rule barring employees from registering on the out-of-work list at more than one branch office. See Jt. Exh. 1, p. 12 (Sec. 5 H-2). Following internal union proceedings, Local 433 found Lopez guilty and imposed a $998 fine against him. When Lopez appealed this action, the International Union affirmed the local union's findings and conclusions but reduced Lopez' fine to $499. Over the next three years, Lopez apparently ignored Local 433's efforts to collect the fine. However, he otherwise maintained his membership in good standing by paying the regular periodic dues and fees assessed against all members, usually in person at the union's office. In addition, he continued to obtain work when not disabled through the Local 433's hiring hall.

Although the full scope of Local 433's efforts to collect his fine are not fully known, Lopez acknowledged that in August 1999 some unspecified union official told him that Local 433 planned to collect the fine by applying his dues payments against his fine balance until paid in full. Later in 1999, Jim Butner, Local 433's Business Manager, wrote to General Secretary James E. Cole seeking advice about collecting the Lopez fine. Cole responded in a January 3 letter advising Butner the he could apply Lopez' future dues payments against his fine balance but cautioned that if "the member goes suspended for non-payment of dues, you would still be required to allow him to use the hiring hall…and you should take no action with respect to denying him employment."

Later in January, Lopez went to Local 433's office intent upon paying his dues as his last payment only covered the period through October 1999. On this occasion, Kim Taylor, Local 433's office manager, advised Lopez that any money he tendered would be applied against his fine balance. When Lopez protested that he would not be able to work, Taylor presented a copy of Cole's letter and assured him that working would not be a problem. At Lopez' request, Taylor provided with a copy of Cole's January 3 letter. Lopez then left without making any payment.

Thereafter, Butner wrote to Lopez on March 16. In this letter, Butner reminded Lopez that "[a]s you have been previously informed, any payments received from you will be applied to this fine until it is paid in full." This prompted Lopez to visit the union's office again on March 22 to pay his dues. Monica Urrea, one of the Union's office employees, dealt with Lopez. Although Lopez told Urrea that he wanted to pay his dues, she told him any money he paid would be credited against the fine. Lopez protested but finally tendered $100 saying that it was for his union dues and that whatever she did with the money was her business. Urrea took the money and provided Lopez with a receipt showing that his payment had been applied against his fine leaving an unpaid fine balance of $399. That receipt also prominently reflected that his dues were still paid only through October 1999.[4]

[4] The portion of the receipt showing the status of his dues payments is enclosed in a computer-generated box in the middle part of the upper third of the document.

On April 17, Butner wrote Lopez calling attention to the fact that his membership dues had not been paid since October 1999. The letter states: "If we do not receive a payment on or before April 30, 2000 you will go suspended from Local 433." The letter further warns: "[I]f your membership goes suspended you will not be allowed to work until you have been reinstated." Lopez made no further payments to Local 433; instead, he filed this charge shortly after receiving Butner's April 17 letter. On April 30, Local 433 suspended Lopez' membership.

In late July, Lopez wrote to the International Union enclosing Cole's January 3 letter and Butner's April 17 letter, and calling attention to the obvious inconsistency as to whether he would be "allowed to work" following his membership suspension. He asked that the International Union assist him by compelling Local 433 officials to allow him to work. So far as is known, no International Union official responded. However, Lopez admitted that Local 433's attorney advised him in July that he would be permitted to work even though suspended from membership. Later, Local 433's attorney sent Lopez a letter dated September 5 stating that if he desired to work he would be "placed in the appropriate list for dispatch purposes without regard to any fine which was imposed on you." As for Butner's April 17 letter, the attorney noted that the letter advised Lopez "that you had not paid membership dues which are required to be kept current under the terms of the Union's Security Provision of the contract" and that "[t]he Union will apply that provision to the extent permitted by law."

Lopez never worked during the 2000 calendar year. He did not attempt to register on a Local 433 out-of-work list until November 16. At that time, Jack Holt, Local 433's new business manager, permitted him to register only on the "E-list," the lowest category of registrants, assertedly because he had insufficient recent work experience to qualify for registration on any higher list.[5] Lopez subsequently convinced Holt in August 2001 that he should be permitted to register of the A-1 list, the highest category of contractual registrants. Since registering, Lopez has received some referrals but has made no further payments to Local 433.

B. Argument and Conclusions

The General Counsel claims that Respondent adopted a *de facto* policy of collecting dues before fines by thrice telling Lopez, per Cole's January 3 "instructions," that any future dues payments from him would be applied against his 1996 fine. Pointing to a variety of Board decisions finding different sorts of union rules establishing a fines-first scheme unlawful where co-extensive with a contractual union-security clause, the General Counsel contends that this conduct violated 8(b)(1)(A). The General Counsel also contends that Local 433 also violated 8(b)(1)(A) by actually crediting Lopez' $100 dues payment on March 22 against his fine balance. The General Counsel further argues that Local 433 violated 8(b)(1)(A) and 8(b)(2) by Butner's written threat to Lopez of April 17 that he could not work if he did not pay his dues violated 8(b)(1)(A), and that this threat coupled with the actual suspension on April 30 effectively constituted a refusal to register and refer Lopez in violation of Section 8(b)(2). Finally, the General Counsel contends that Local 433 violated 8(b)(1)(A) when it suspended Lopez from membership without providing him with a notice of employee rights that have evolved out of *General Motors* and *Beck*.

[5] Local 433's counsel asserted without contradiction at the hearing that the General Counsel declined to proceed on a separate unfair labor practice charge Lopez filed concerning his placement on the out-of-work list.

Local 433 claims that it did not violate the Act by crediting the monies tendered by Lopez to his outstanding 1996 fine for two reasons. First, Local 433 argues that Section 10(b) bars the complaint allegation that its allocation of the Lopez' March payment to the fine balance violated the Act because Lopez learned in August 1999 that Respondent planned to credit his dues payments against his fine balance. Second, Local 433 argues that Cole's letter to Butner cautioning against barring Lopez from registering for referral on the out-of-work list or depriving him of employment distinguishes Lopez' situation from that found in *Elevator Constructors Local 8 (San Francisco Elevator)*, 243 NLRB 53 (1979), and its progeny. Local 433 also claims that it never refused to refer Lopez because of the dues/fine issue and, in any event, Section 10(b) also bars that allegation. As for the obvious conflict between Cole's letter and Butner's April 17 letter, Respondent contends that Lopez could easily have learned that Butner did not mean what he said in his letter had he made the slightest effort to ask Butner for a clarification of the apparent conflict. Lopez did not do so, Respondent contends, because he had been placed on disability and not intended to register on the Union's out-of-work lists at that time. Finally, Respondent contends that it had no duty to provide Lopez with specific notice of rights under *General Motors* or *Beck* because Lopez has always insisted upon continuing his 20-year old union membership.[6]

I agree with the General Counsel that Respondent violated Section 8(b)(1)(A) by telling Lopez that his dues payments would be applied to satisfy his fine. In reaching this conclusion, I reject Respondent's claim that Cole's January 3 advisory letter distinguishes this situation from *San Francisco Elevator, Id*. and similar cases cited by the General Counsel. In my judgment, Respondent had the burden of proving that it lawfully maintained a concurrent fine-first rule side-by-side with a union-security clause. Although probably well intentioned, Cole's letter alone is insufficient to meet that burden. Butner's April 17 letter, most likely a form letter Local 433 sends to any member whose dues become seriously past due,[7] illustrates the virtually impossible task this Respondent or any other labor organization would have in attempting to dance on the lawful side of the line by adopting a fine-first rule in the context of a union-security clause. As applied to Lopez, of course, the essence of the Respondent's fine-first rule would mean that his dues would never be fully paid until he knuckled under by paying the fine.

In reality, Respondent would have an arduous, time-consuming oversight task to deal with a member such as Lopez' in order to insure he suffered no adverse employment impact from the application of a fine-first rule. Employee-members who work under agreements such as the one involved here encounter periodic, lawful demands that they document their eligibility for employment under the membership maintenance requirements of the collective-bargaining agreement. In his testimony, Lopez repeatedly and credibly protested that he could not even obtain a referral ticket without showing the hiring hall agent a paid-up dues receipt. Although this hurdle might be cured with a simple direction to the hiring hall agent, Respondent does not fully control every possible source that could potentially disrupt Lopez employment under the California-Southern Nevada Agreement. Thus, this collective-bargaining agreement provides

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[6] I reject and do not further consider Respondent's claims concerning the application of 10(b) to this case. Even though it may have told Lopez that his dues would be applied to his fine more than six months before actually doing so, a separate violation occurred when it actually took that step in March. Plainly, the charge was timely filed as to this allegation. As I have found in agreement with Respondent that it never actually refused to refer Lopez, I find it unnecessary to consider its puzzling 10(b) argument concerning this allegation.

[7] In fact, Respondent's counsel described the April 17 letter as a "form" letter in the course of argument at the hearing.

for the employer-transfer of employees to other local union jurisdictions and requires the employee-member to notify a sister local when transferred to its jurisdiction. It would be reasonable to presume that agents of the sister local at some point would also insist on proof of work eligibility in the form of a paid-up dues receipt. In addition, as illustrated in a case the General Counsel cites, *Iron Workers Local 377 (M.S.B., Inc.)*, 299 NLRB 680 (1990), job stewards have occasion from time-to-time to demand evidence of work eligibility in the form of a paid-up dues receipt. Hence, in order for Respondent to maintain a sanitized fine-first rule, it would have to be vigilant that of all the various union officials Lopez might possibly encounter while seeking or engaging in his trade under the contract understood and agreed not to interfere with his employment. Such an expectation is, at best, an illusion. As noted, even Respondent's own business manager, within 3 months of Cole's cautionary advice specifically addressed to him, threatened Lopez' employment prospects. Furthermore, I find the verbal assurances he received from the union's two clerical employees that he could register for referral, and be referred, insufficient to overcome the contractual and cultural obstacles Lopez would likely face when seeking employment without written proof of compliance with the union-security clause.

In addition I agree with General Counsel's claim that Respondent violated the Act by actually crediting Lopez' $100 dues payment on March 22 against the fine balance rather than against his dues as requested when he submitted the payment. *Iron Workers Local 377, supra,* citing *Bay Counties District Council of Carpenters*, 145 NLRB 1775 (1964). For reasons addressed above, Cole's advisory letter is insufficient to shield Lopez from the far reaching impact of an institutional culture resulting from Local 433's historical hiring hall practice that required the production of a paid-up dues receipt from long-term employees in order to obtain a job-referral ticket. By crediting the March 22 dues payment against the fine balance, Respondent deprived Lopez of the necessary dues receipt that would fully facilitate his referral and employment. I find that by this separate conduct Respondent put Lopez' further employment through the hiring hall in peril and thereby restrained him within the meaning of Section 8(b)(1)(A).

However, the General Counsel's claim that Respondent actually refused to register and refer Lopez as alleged in complaint paragraph 22(e) is another matter. In support of this allegation, General Counsel relies solely on the threat made by Butner in his April 17 letter. Although I find Butner's threat unlawful, the evidence is insufficient to establish that Butner or any other Local 433 agent acted on that threat to prevent Lopez from actually registering for referral or from actually obtaining a referral. On the contrary, Lopez admittedly remained in a disabled status apparently unable to work at least until July. Furthermore, he admitted that Respondent's counsel provided him with a verbal assurance in July that he would be permitted to register for referral and gave him a written assurance to that same effect in September. When Lopez finally attempted to register for referral in November, he was permitted to do so. In addition, sparse as it is, the evidence available shows that Lopez was referred for employment at some point after he finally registered on the out-of-work list. For the foregoing reasons, I conclude that General Counsel failed to prove complaint paragraph 22(e) by a preponderance of the credible evidence and, hence, I recommend dismissal of this allegation.

General Counsel contends, in effect, that a suspension or expulsion of a worker from membership, made contractually mandatory for work purposes, triggers an obligation that the union taking such action provide the employee with a notice of the options available under *General Motors* and *Beck.* In complaint paragraph 22(g), the General Counsel claims that the content of that notice include a statement that: (1) he had the right to be or remain a nonmember; (2) that he had a right as a nonmember to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities; (3) that he had

a right to be given sufficient information to enable him to intelligently decide whether to object; and (4) that he had a right as a nonmember to be apprised of any internal union procedures for filing objections to the fee imposed. I agree with the contention that a notice of right must be given and with most, but not all, of General Counsel's contentions as to the substance.

General Counsel cites no case directly on point and I have been unable to locate precise precedent concerning the content of a *General Motors/Beck* notice required when a labor organization suspends or expels a long-term union member from membership for reasons other than failing to pay mandatory dues and fees as is the case here. In her brief, counsel for the General Counsel argues that in the absence of a *Beck* notice, a union may not lawfully seek the discharge of an employee, whether a member or a nonmember, for failing to pay the requisite dues and fees under a union-security agreement. In support, she cites *Rochester Mfg. Co*., 323 NLRB 260 (1997), affd. 194 F.3d 1311 (6th Cir. 1999); and *Production Workers Local 707 (Mayo Leasing Co.)*, 322 NLRB 260 (1997), affd. 194 F.3d 1311 (6th Cir. 1999). Although these cases provide pertinent direction, they do not address the particular fact situation found here.

California Saw & Knife Works, 320 NLRB 224, 230 (1995), holds generally "that a union's obligations under *Beck* are to be measured by [the duty of fair representation] standard." It and *United Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), a companion case decided the same day as *California Saw*, established an "inextricable link" between *General Motors* and *Beck* rights in that without exercising the former, the latter never come into play. However, in this case Lopez eschewed the exercise of his *General Motors* rights. Instead, Local 433 effectively altered his status to that of a nonmember against his will. For reasons explained below, I find that where a labor organization acts to suspend or expel a long-term member, its duty of fair representation (DFR) obligations require a *General Motors/Beck* notice but one more carefully tailored to fit situation than that advanced by the General Counsel.

When the Board considered the specific allegations of the *California Saw* complaint, it noted that the General Counsel claimed that the International Association of Machinists and Aerospace Workers (IAM) violated the Act by failing to place some kind of an alert on the cover of the union magazine issue where it annually published a statement of its *Beck* policy. The General Counsel also alleged that the IAM unlawfully failed to issue an additional *Beck* notice – apart from the annual publication – that pertained to "two subgroups of non-member employees: (1) newly hired nonmember employees at the time they are hired into the bargaining unit; and (2) to newly resigned nonmember employees when they resign their union membership."

As to employees in the first subgroup, the Board found that a union has a DFR obligation to furnish those individuals with a *Beck* notice before they become subject to obligations under a union-security clause. Undoubtedly the Board felt there would be a strong likelihood that employees in this category would not have had an opportunity to see the union's annually published policy statement. However, as to the second subgroup – those employees who recently resigned their union membership – the Board found that a union has no DFR obligation "to issue an *additional* notice of *Beck* rights to new non-member employees at the time they resign their union membership." [Emphasis mine] In the following paragraph, the Board became more specific by stating that the IAM had a DFR obligation to give a *Beck* notice to "currently employed employees at the time they become nonmembers if these currently employed employees have not been sent a copy of [the monthly Machinist's magazine containing the IAM's *Beck* policy statement]." 320 NLRB 231.

I find a union's DFR obligation to provide a *General Motors*/*Beck* notice to recently expelled or suspended member-employees at the very least parallels the obligation found applicable to newly resigned members in *California Saw*. Having reached this conclusion, Respondent was obliged to show either: (1) that it regularly publishes a lawful statement of its *General Motors*/*Beck* policy by a means that made it available to its membership-at-large including Lopez; or (2) that it provided a separate, lawful *General Motors/Beck* policy statement to Lopez at or near the time of his suspension or expulsion.

Respondent did neither. Although its counsel quizzed Lopez concerning various union publications, no proof was ever submitted that Respondent regularly publishes a widely distributed notice to its members concerning their *General Motors*/*Beck* rights. Likewise, Respondent provided no evidence contradicting Lopez' claim that he never received a DFR-type notice around the time of his membership suspension on April 30. Accordingly, I find generally that Respondent violated the Act by its failure to give Lopez a proper *General Motors/Beck* notice when it suspended his membership.

However, I do not entirely agree with the General Counsel concerning the substance of a DFR notice required of a labor organization where, as here, it suspends a member for reasons other than the failure to pay the fees mandated in the second proviso of Section 8(a)(3). As shown in complaint paragraph 22 (g)(i),[8] the General Counsel believes that Lopez should have been told that he had "the right to be or remain a nonmember," the standard *General Motors* notice that would be apt before a union imposes union-security obligations on a new employee. However, requiring a labor organization to give a DFR notice to that effect to a long-term member about to be involuntarily banished would be irrelevant and inappropriate. Where a labor organization expels or suspends an employee from membership, the employee ceases to have a choice about membership options. Informing such a person that he/she has a right to be or remain a nonmember can easily be characterized as information hardly worth knowing. I find no rational purpose relevant to the Act that would be served by elevating such a notice in a situation such as this to the level of a DFR obligation.

Instead, the more appropriate DFR notice in this type of case should draw its essence from the situation and the Supreme Court's core observation in *General Motors* concerning the degree to which the law permits union membership to impact on an employee's employment. "It is permissible to condition employment upon membership," Justice White wrote for the Court, "but membership, insofar as it has significance to employment rights, may in turn be conditioned *only* upon payment of fees and dues [specified in Section 8(a)(3)]." 373 U.S. 742. [Emphasis mine.] Applying this principle here, I find Local 433 forfeited its right to affect Lopez' employment under the contractual union-security clause when it unlawfully misallocated his dues payment to his fine balance and then suspended him from membership for failing to pay his dues. In this Catch 22-like situation, the more appropriate DFR notice should address the highly significant question Lopez or any other similarly situated employee would likely have concerning their continued employment through the union hiring hall and under the union-security clause.

Based on the foregoing rationale, I find that at or about the time Respondent suspended Lopez' membership, it had a DFR obligation under the *General Motors/Beck* principles to inform

[8] When the complaint issued, the referenced subparagraph was numbered 22(h)(i). At the hearing, a subparagraph was added to complaint paragraph 22 so that the referenced subparagraph became 22(g)(i).

him: (1) that as a nonmember he could continue to register for referral at the hiring hall and be referred for employment under California-Southern Nevada Agreement the so long as he continued to pay the dues and fees lawfully required of all others under the agreement's union-security clause; (2) that if he objected paying (through his dues payments) for union activities other than collective bargaining, contract administration, or grievance adjustment, he could obtain a pro-rated reduction in the mandatory union-security fee for amounts spent by the union on all other activities; (3) that he had a right to sufficient information that would enable him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and (4) that he had a right to be apprised of the union's procedures for objecting to the union-security fee imposed if he declined to pay for union activities other than collective bargaining, contract administration, or grievance adjustment. Because Local 433 failed to provide this or any other type of DFR notice to Lopez when it suspended his membership, I conclude that it violated Section 8(b)(1)(A).

Conclusions of Law

1. Local 433 is a labor organization within the meaning of Section 2(5) of the Act.

2. Local 433 engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) by informing Lopez in January and March 2000 that any payment made by him toward the periodic dues required under the union-security clause of the California-Southern Nevada Iron Worker Agreement would be applied against his fine balance until fully paid; by applying the payment tendered by Lopez on March 22 to his outstanding fine balance rather than to the amount due under the union-security clause of the California-Nevada Iron Worker Agreement; by threatening Lopez in an April 17 letter that he would not be permitted to work under the California-Southern Nevada Iron Worker Agreement if suspended from membership for his continued failure to pay the dues required by that agreement's union-security clause; and by suspending Lopez from membership on April 30 without providing him with a notice of his employment rights as a nonmember.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The General Counsel failed to sustain its burden of proving that Local 433 failed and refused to permit Lopez to register for referral or to refer Lopez for employment under the California-Southern Nevada Iron Worker Agreement.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As I have concluded that Respondent misappropriated the dues payment made by Lopez on March 22, my recommended order also requires Respondent to restore the *status quo ante* by crediting that payment to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agreement, to debit his fine balance by an equal amount, and to issue an official union receipt reflecting this action. Respondent also will be required to provide Lopez with a written assurance of his employment rights under the California-Southern Nevada Iron Worker Agreement as detailed above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Local 433 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

a. Informing employee-members that any payments tendered to Local 433 to satisfy the initiation fees and periodic dues required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied to satisfy an outstanding fine balance until fully paid.

b. Applying the monies tendered by employee-members to Local 433 in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

c. Threatening employee-members that they suspended from membership and not permitted to work under the California-Southern Nevada Iron Worker Agreement for failing to pay dues and fees required under that agreement's union-security clause after misallocating dues payments to an outstanding fine balance.

d. Suspending any member employed under the California-Southern Nevada Iron Worker Agreement from membership in Local 433 after misallocating that employee's union-security dues payments without informing the employee of his/her continued employment rights under that agreement.

e. In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

a. Within 14 days from the date of this Order, credit Sotero Lopez' payment to Local 433 on March 22, 2000, to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agreement, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

b. Within 14 days from the date of this Order, notify Sotero Lopez in writing that:

(1) Local 433 will insure that as a nonmember he may continue to register for referral and be referred for employment under the California-Southern Nevada Iron Worker

[9] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Agreement so long as the he pays the dues and fees required under the union-security clause of that agreement;

(2) If he objects to paying for the cost of union activities other than collective bargaining, contract administration, or grievance adjustment, he may obtain a pro-rated reduction in the mandatory union-security fee for amounts spent by the union on all other activities;

(3) Local 433 will promptly provide him with sufficient information to enable the him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and

(4) Local 433 will apprise him of the union's procedures for objecting to the amount of the union-security fee imposed if he elects to decline to pay for union activities other than collective bargaining, contract administration, or grievance adjustment.

c. Within 14 days after service by the Region, post at each of its Southern California and Nevada hiring halls copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the operations involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all hiring hall registrants at any time since April 28, 2000.

d. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: September 30, 2002.

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Administrative Law Judge

[10] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT inform employees that any payments tendered to satisfy the periodic dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement will be applied first to satisfy an outstanding fine balance until it is fully paid.

WE WILL NOT apply monies tendered by employee-members in payment of the dues and fees required under the union-security clause of the California-Southern Nevada Iron Worker Agreement to an outstanding fine balance.

WE WILL NOT threaten employees suspended from union membership because we misallocated their dues payments to pay off a fine balance that they will not be permitted to work under the California-Southern Nevada Iron Worker Agreement.

WE WILL NOT suspend members employed under the California-Southern Nevada Iron Worker Agreement from membership in Local 433 after misallocating their dues payments without providing them with written notice of their legal employment rights as nonmembers.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL credit Sotero Lopez' March 22, 2000, dues payment to those dues and fees collectable under the union-security clause of the California-Southern Nevada Iron Worker Agreement, debit his fine balance by an equal amount, and issue an official receipt to him reflecting this action.

WE WILL notify Sotero Lopez in writing of his continued employment rights under the California-Southern Nevada Iron Worker Agreement as follows:

(1) Local 433 will insure that as a nonmember he may continue to register for referral and be referred for employment under the California-Southern Nevada Iron Worker Agreement so long as the he pays the dues and fees required under the union-security clause of that agreement;

(2) If he objects to paying for the cost of union activities other than collective bargaining, contract administration, or grievance adjustment, he may obtain a pro-rated reduction in the mandatory union-security fee for amounts spent by the union on all other activities;

(3) Local 433 will promptly provide him with sufficient information to enable the him to intelligently decide whether to object to paying for union activities other than collective bargaining, contract administration, or grievance adjustment; and

(4) Local 433 will apprise him of the union's procedures for objecting to the amount of the union-security fee imposed if he elects to decline to pay for union activities other than collective bargaining, contract administration, or grievance adjustment.

LOCAL 433, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor, Los Angeles CA 90017-5449

(213) 894-5220, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER AT TELEPHONE (213) 894-5229.